

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE SMT BEENA A. PILLAI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 5633/Del/2015
(Assessment Year: 2010-11)

Apex Education Society, C/o. Akhilesh Kumar, Advocate, Chamber No. 206-7, Ansal "Satyam", RDC Raj Nagar, Ghaziabad PAN: AAAA7098M	Vs.	Addl. CIT, Range-1, Ghaziabad
(Appellant)		(Respondent)

Assessee by :	Shri Akhilesh Kumar, Adv Shri Vipin Garg, Adv
Revenue by:	Ms. Naina Soin Kapil, Sr. DR
Date of Hearing	30/01/2019
Date of pronouncement	29/3/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A), Ghaziabad dated 04.08.2015 for the Assessment Year 2010-11.
2. The assessee has raised the following grounds of appeal:-
 - “1. *Because, learned commissioner of income tax (appeals) grossly erred in upholding the addition u/s 115BBC of the Act by recording a wrong finding that the assessee failed to prove the identity of donors without appreciating that assessee has fully complied his obligation under that provision in a very short inning of one reply, hence addition is against the specific provision of law.*

2. *Because, in addition of above, Id CIT(A) failed to appreciate that the Id. AO had not disputed the identity but disputed the capacity etc. in terms of s.68 that too without conducting any enquiry in two innings but Id. CIT(A) disputed the identity without any existing or new fact/ material against the assessee.*
3. *Because, Id. CIT(A) has grossly erred in overlooking the fact on record that the additions are made without conducting any enquiry of any kind from the assessee before additions and by wrongly completing the proceedings unilaterally but mischievously showing presence of assessee, hence additions were against all the cannons of law.*
4. *Because, without prejudice to above but in addition , learned AO failed to appreciate the fact on the record that in the absence of any educational or other activity assessee could not have any income as per the settled law.*
5. *Because, in addition of above, Id AO failed to appreciate the fact of donation being towards corpus is not the part of income in term of specific provision of section 11(1)(d) read with section 12(1) of the I.T. Act, 1961 specifically when donors are admittedly tax payers and name/ address is also on record.*

Therefore, it is prayed that the addition of Rs. 58,23,500/- sustained u/s 115BBC may kindly be quashed.”

3. The facts of the case show that the assessee is an educational trust who filed its return of income on 24/2/2011 declaring nil income. During the course of assessment proceedings it was found that the assessee has received a donation of INR 61,300,00/- from various donors. The assessee was asked for the detail of the donors with name, address, and copy of the income tax return and the bank accounts of the donors. The assessee submitted vide letter dated 21/11/2012 along with the affidavits of the donor. It was found that there are 8 donors from which the assessee has received a donation of INR 61,30,000/-. On the perusal of the affidavit the learned assessing officer noted that the addresses of the 8 donors shows that it belongs to 3

families. The signature on the affidavit in case of 2 donors was found to be forged documentation as it is signed by the same person. The date of signing of the affidavit was also doubted by the learned assessing officer. Further though the donors and stated to be at different addresses however the stamp paper on which affidavits have been notarised bear the signature of same notary. Further only on 2 dates 6/8/2009 and 21/8/2009 the donations are made. On perusal of the affidavit the learned AO noted that all bank accounts are running at HDFC bank , Chandni Chwok , New Delhi, however the residential addresses of all these persons are different and are savings bank accounts. Therefore according to AO the affidavits cannot be relied upon hence the assessee was asked to produce the proof of the identity of these donors along with their capacity to donate such an amount. All the returns of the donor were found to be below taxable limit. The bank accounts of the donor showed that the so-called donation has been made after requiring transfer entry from others. The people were found to be of no means. Therefore the AO asked the assessee to produce the above donors but same were not produced. The assessee also could not produce the complete bank accounts of these donors. On the basis of above facts the learned AO noted that the donations are neither the contribution nor they are voluntary. According to him, they are basically bogus entries the nature of which remained unexplained. Accordingly he made an addition of INR 6 130000/- u/s 68 of the income tax act stating that it is even otherwise not an anonymous donation. Accordingly assessment under section 143 (3) of the act was passed on 25/3/2013 determining total income of the assessee at INR 6 130000/-.

4. Assessee aggrieved with the order of the learned assessing officer preferred an appeal before the learned CIT – A. The learned CIT – A considered the written submission filed by the assessee and sought comments of the learned assessing officer. He also sought the rejoinder of the assessee. After considering these submissions, he noted that the assessee has raised the contention that even if the genuineness of the donors are not proved no addition u/s 68 can be made in case of charitable institutes. The assessee relied upon the decision of the honourable High Court in 364 ITR 398 and the decision of the coordinate bench in the case of ITA number 3848/del/2009 dated 19/3/2010. He held that both the jurisdictional High Courts and the jurisdictional bench of the tribunal have held that in such facts addition u/s 68 cannot be made as the donation so received are applied for charitable purposes. He further stated that in case of ITA number 2428/del/2011 dated 06/12/2013 also held that the addition in such facts cannot be made u/s 68 of the income tax act therefore he deleted the addition u/s 68 of the act. However he confirmed the addition of INR 5 823500 as anonymous donation under section 115BBC of the act. Against this order of the learned CIT – A, assessee is in appeal before us.

5. The learned authorised representative submitted a detailed paper book before us wherein the copy of the affidavit, income tax return and bank account of all the 8 donors along with the confirmation was submitted. It was stated that assessee has received the above donations which are backed with the receipts and complete details are maintained in the donation registered

with identity of the parties. It was further submitted that all the donations are towards corpus and are capital receipts. He reiterated all the submissions made before the lower authorities and submitted that the addition in the hands of the assessee cannot be made as anonymous donation u/s 115BBC of the income tax act as assessee has shown name and address of the details. Assessee has also produced further details. The learned authorised representative vehemently relied upon the decision of the coordinate bench in case of Pattanjali Yogpeeth (Nyas) vs additional director of income tax (exemptions) in 163 ITD 323. He submitted that the case of the assessee is squarely covered by the para number 18.1 of that decision for the reason that assessee has submitted the complete details of the name and address of the donors. He further stated that according to the provisions of section 115BC of the income tax act there is no need for proving the creditworthiness and genuineness of the transaction. He further relied on the decision of the coordinate bench in case of Shanti Niketan Trust V Addl CIT ITA number 04/01/2009/del/2015 for assessment year 2010 – 11 wherein on identical facts and circumstances of the case the addition is deleted.

6. The learned departmental representative vehemently supported the order of the lower authorities and submitted that the assessee has miserably failed to show the identity, creditworthiness, genuineness of the about transaction of the donor making such a huge donation to the assessee and does not have enough resources with them to make the same. The learned departmental representative further referred all the findings of the learned assessing officer as well as the learned

CIT – A. She also submitted that the addition in the hands of the assessee society can be made u/s 68 of the income tax act however as it could not be ascertained whether the revenue has filed an appeal against the order of the learned CIT – A or not. Even otherwise he stated that anonymous donation is identical to the provisions of section 68 of the income tax act. He further referred to the decision of the honourable Delhi High Court in case of Keshav Social & Charitable Foundation 278 ITR 152 (del) confirmed in 394 ITR 496 and submitted that in that particular case the donation was credited to the income and expenditure account of the society and therefore it was held that when the amount has already been offered as an income it cannot be taxed u/s 68. She submitted that in the present case the assessee himself is saying that the above donation is towards corpus of the trust she further referred to the balance sheet of the society and stated that the above donation has been straight way credited to the coffers of the trust. Therefore all those decisions where the provisions of section 68 cannot be applied to the charitable trust does not apply to the facts of this present case.

7. We have carefully considered the rival contention and perused the orders of the lower authorities. Undoubtedly, the assessee has received a donation of INR 6,300,000 where the creditworthiness of the donor and genuineness of the donation is seriously in doubt. However the learned CIT – A has deleted the addition u/s 68 of the act but confirmed the addition u/s 115BBC of the act, therefore now we do not have any option to look into the taxability of the above donation u/s 68 of the income tax act, as the revenue has not filed appeal against the

order of the learned CIT – A. Admittedly in this case the donation is not offered as income in the income and expenditure account but is credited in corpus donation account, therefore the fact in the present case are quite different. However, now we need to restrict ourselves to look at the taxability of the above sum only with respect to the provisions of section 115BBC of the act. Admittedly, in this case the assessee has provided the name and address of the donors. Therefore the movement assessee provides the same, the liability of the assessee extinguishes so far as the taxability under section 115BBC of the act is concerned. Such is the mandate of the several coordinate bench decision cited before us as under:-

- a. Shanti Niketan Trust V Addl CIT ITA 4109/ Del/2015
- b. Pattanjali yogpeeth V ADIt 78 taxmann.com 54 affirmed by Hon Delhi High court in 87 Taxmann.com 54.

8. In view of the above binding precedents produced before us, which are on the identical facts, therefore respectfully following them we reverse the order of the lower authorities and direct the learned assessing officer to delete the above addition.
9. Accordingly, the appeal of the assessee is allowed.
Order pronounced in the open court on 29/03/2019.

-Sd/-

(BEENA A. PILLAI)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 29/03/2019
A K Keot

Copy forwarded to

1. Applicant

2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi